

May 11, 2004

PUBLIC UTILITIES COMMISSION  
Amendments to Standard Offer Rule  
(Chapter 301)

NOTICE OF RULEMAKING

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

Through this Notice, we initiate a rulemaking to amend certain provisions of our standard offer rule (Chapter 301). The purpose of the amendments is to allow for Commission flexibility to implement its evolving approach to standard offer service for the medium and large non-residential customer classes and to otherwise make the rule consistent with Commission standard offer practice.

**II. BACKGROUND**

As part of the Restructuring Act, the Legislature directed the Commission to select standard offer providers through a competitive bid process to ensure the availability of electricity service upon reasonable terms to all customers who do not chose a competitive provider. 35-A M.R.S.A. § 3212. The Commission's approach to procuring standard offer service for the various standard offer classes has evolved since the beginning of retail access. With respect to the medium and large non-residential standard offer classes, the Commission's current view is that standard offer prices should track changes in the regional wholesale market as closely as practicable.<sup>1</sup> To accomplish this goal, the Commission has adopted an approach whereby it solicits standard offer bids for these classes on 6-month intervals. In addition, the Commission has been exploring the feasibility of establishing standard offer prices by reference to an external index.

Chapter 301 contains provisions that are inconsistent with the Commission's current approach to medium and large standard offer service. Accordingly, we propose to amend the rule to modify those provisions and allow the Commission appropriate flexibility to implement its current approach to procuring standard offer service. We also propose to amend certain provisions of the standard offer rule to make it consistent with

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<sup>1</sup> For a discussion of the Commission's rationale regarding standard offer supply and pricing for the medium and large non-residential classes, see *Standard Offer Study and Recommendations*, Maine Public Utilities Commission (pages 15-18) (Dec. 1, 2002) and *Report on Standard Offer Issues*, Docket No. 2003-127 at 3-10 (May 28, 2003).

current practice and to remove some outdated language. The specific proposed changes are discussed in section III below. Under 35-A M.R.S.A. § 3212(1)(2), rule amendments pursuant to this proceeding are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Because the proposed rule amendments only serve to make the rule consistent with current Commission practice, we expect this rulemaking to be non-controversial. We emphasize that this rulemaking has no bearing on the Commission's consideration of the issues currently pending in the Inquiry Into Standard Offer Supply Procurement for Residential and Small Commercial Customer (Docket No. 2004-147) or the Commission's upcoming major substantive rulemaking on the use of renewable resources as a hedge against price volatility pursuant to P.L. 2003, ch. 665.

### III. PROPOSED AMENDMENTS

#### A. Medium and Large Standard Offer Service

##### 1. Form of Pricing (Section 7(A)(2))

The current rule states that standard offer "[p]rices may not be defined by a formula or reference to market or economic indices." As mentioned above, the Commission has been exploring the feasibility of basing standard offer prices for the medium and large classes on an external index (such as forward electricity prices). We therefore propose to modify this provision to specify that prices may be based on a formula or index if the Commission so directs in its request for standard offer bids.

##### 2. Duration of Proposals (Section 8(A)(5))

The Commission's recent practice has been to solicit bids for the medium and large classes for six-month terms. The current rule, however, states that the duration of standard offer service proposals may not be less than one year. Accordingly, we propose to delete the one-year duration requirement.

##### 3. Selection Criteria (Section 8(C)(2))

We propose to add to the selection criteria section of the rule a provision that would explicitly allow for Commission consideration of the objective of establishing standard offer prices that track market price changes. As noted above, the Commission's current position is that standard offer prices for the medium and large classes should track the regional market as closely as possible because this will better enable other suppliers to compete against standard offer and there is sufficient retail competition for those classes to provide for price stability if so desired by the customer. We seek comment on whether there should be a trigger for the applicability of this criteria, such as the existence of a sufficient level of retail competition.

B. Miscellaneous Changes

1. Selection Date (Section 8(C)(1))

The current rule states that the standard offer provider selection date must be at least 45 days before the beginning of the standard offer period. Our experience reveals that such a long lead time is not necessary and that discussions with bidders regarding non-price terms may result in a selection date closer to the beginning of the service date. We therefore propose to remove the 45-day requirement.

2. Rejection of Bids for Noncompliance (Section 8(B))

The current rule requires bids to be rejected if they do not comply with any of the requirements of the rule or request for bids. Our process has evolved to one in which we seek indicative bids for purposes of determining the bidders for which discussions on non-price terms will occur. Binding bids are requested later in the process when discussions on non-price terms are completed with a sufficient number of bidders. Our experience with this process has revealed that flexibility regarding bidder compliance with various requirements is important in securing the best outcome for standard offer customers. Accordingly, the proposed rule provides greater flexibility regarding the rejection of bids for noncompliance.

3. Bids for Portions of Requirements (Section 7(B)(3))

Section 7(B)(3) allows for standard offer bids in multiples of 20% up to the total class requirements and requires bids for each 20% increment below the highest bid percentage. In our experience, bidders are able to effectively avoid this requirement by offering unacceptable bids for the lower 20% increments. Because the requirement for bids below the highest percentage has proven impractical, we proposed to remove it.

4. Consumer-owned Utilities (Section 8(E)(3))

The Restructuring Act allows consumer-owned utilities (COUs) to opt to conduct their own bid process in lieu of a Commission process. The current rule states that COUs must notify the Commission of their intent to conduct a bid process. Since the beginning of retail access, all COUs have opted to conduct bid processes for standard offer providers for their respective service territories. Thus, such action by the COUs has become the norm and COUs generally have not provided the required notification. We therefore propose to change the rule so that a COU is required to notify the Commission if it decides not to conduct its own standard offer bid process.

5. Standard Contract (Section 5(D))

Standard offer providers and transmission and distribution utilities are required to enter a service contract governing their relationship with respect to standard offer service. For this purpose, the Commission approves a standard form contract. The current rule details a variety of items that are not generally included in the standard contract. We thus propose to simplify the provision and state generally those areas that are governed by the standard contract.

6. Standard Offer Availability (Section 1(C))

The current rule states that that standard offer service shall be available until at least March 1, 2005 unless extended pursuant to 35-A M.R.S.A. § 3212(4). Section 3212(4) states that standard offer must be available until March 1, 2005 and requires the Commission to investigate whether the continued availability of the service is necessary and in the public interest. As required, the Commission provided the results of that investigation to the Legislature on December 1, 2002. The Commission concluded that the continued availability of standard offer service was necessary and the Legislature has not acted to terminate the service. Accordingly, we propose to delete the reference in the rule to March 1, 2005.

**IV. RULEMAKING PROCEDURES**

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. No public hearing on this matter has been scheduled. The Commission will schedule a public hearing if requested by 5 or more interested persons. Written comments on the proposed Rule may be filed with the Administrative Director until June 21, 2004. Written comments should refer to the docket number of this proceeding, Docket No. 2004-304 and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

**O R D E R**

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

- a. All electric utilities in the State;
- b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

- c. All licensed competitive electricity providers;
- 2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:
  - a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
  - b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, and this 11<sup>th</sup> day of May, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.